(4)

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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

CR.A.NO. 1105 /2004

APPELLANT IN JAIL	Ramsaran alias Bauna, son of Shri Ramkishun, aged about 25 years, resident of village Belpan, P.S. Takhatpur, District Bilaspur, (C.G.)

4249/04

27/12/04

C.D. Shaney

Advocate

VERSUS

27/12/04

RESPONDENT	The State of Chhattisgarh, through : the S.H.O., Police Station Takhatpur, Distt. Bilaspur (CG)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE, 1973.

(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1105/2004

Ramsaran alias Bauna

Vs.

State of Chhattisgarh

Post for Orders : 27.07.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

(37)

HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1105/2004

Before : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Ramsaran alias Bauna

Vs.

State of Chhattisgarh

Present:-

Ku. Anita Upadhyay, learned Counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.

JUDGMENT

(Delivered on 27 .07.2006)

This appeal is directed against the judgment dated 27-11-2004 delivered by Shri N.K.Chandravanshi, 9th Additional Sessions Judge (F.T.C.), Bilaspur in Sessions Trial Number-347/2004 whereby the appellant was convicted under Section-436 of IPC and was sentenced to undergo rigorous imprisonment for 5 years and to a fine of Rs.3,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 3 months.

2. Briefly stated the prosecution story is that Dhan Sai PW-1 was running a small makeshift hotel at Village-Balpan, Police Station-Takhatpur and on 13-06-2004 at about 10 P.M. while he was sleeping inside the hotel, the appellant called his name and demanded half K.G. mixture. Dhan Sai PW-1 weighed the mixture and was about to deliver it to the appellant when a quarrel ensued. The appellant threatened to set the hotel on fire and lifted the chimney and set the mattresses on fire. As a result of this, the hotel which was entirely made of mattresses was completely burnt.

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3. The appellant who was charged under Section-436 of IPC by the learned trial Judge, abjured the guilt, pleaded innocence and examined Bhagirathi D.W.-1 and Ramsharan D.W.-2 as defence witnesses. The prosecution examined as many as 11 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para-1 (supra).

4. Learned counsel for the appellant urged that the evidence led by the prosecution did not establish the guilt of the appellant under Section-436 of IPC since none of the witnesses examined by the prosecution had seen the appellant setting fire to the shop of Dhan Sai PW-1. It was also urged that the description of the shop as given by Dhan Sai PW-1 in para-16 of his testimony clearly goes to show that it was a temporary makeshift enclosure by mattresses and could not have contained the material shown in panchnama Ex.P-4 i.e. 11 tins of Oil, 6 jars of Dalda, 2 bags of sugar, 3 bags of Maida, 4 bags of Potato, 2 bags of Onion, 30 K.G. of Milk Powder, 25 K.G. of Tea, 2 bags of Bason, 50 K.G. of Mutter, 40 K.G. of Dal, fire wood worth Rs.5,000/-, Two Tolas of Gold, 2 K.G. of Silver ornaments, wooden counter table and cooking utensils and 5 Nos. of Sheep etc. The admission made by Dhan Sai PW-1 clearly revealed that a false F.I.R. was lodged and a completely bogus panchnama of the loss was prepared vide Ex.P-4. It was also urged that para-4 of the testimony of Dhan Sai PW-1 did not rule out the possibility that his shop accidentally caught fire and accused-appellant was falsely implicated. In the alternative, it was also urged that the incident was an off-shoot of a sudden quarrel and was not premeditated and the loss sustained by Dhan Sai was also meager. Hence, interest of justice would be served if the appellant was sentenced to the period already

undergone by him. On the other hand, Shri M.P.S.Bhatia, Panel Lawyer for the State argued in support of the impugned judgment.

5. Having heard rival submissions, I have perused the record. Dhan Sai PW-1 admitted in para-16 of his testimony that his shop did not have a door and mattress was merely hanging in its place. He also admitted that ceiling was also made of mattresses and gunny bags and his shop was purely of a temporary nature. In para-17, he also admitted that during fair etc., he used to fold the mattresses and take the shop to other place. Considering the above admission, the panchnama Ex. P.4 of goods and cattle burnt in the fire appears to be wholly false and not worth credence.

6. The testimony of Dhan Sai PW-1 in para-4 shows that during a quarrel with the appellant, the appellant had picked up a burning chimney inside the so-called hotel whereupon he had held the hand of the appellant who pushed him. This testimony is wholly corroborated by Ramhin Bai PW-2 who stated that during the quarrel the appellant lifted the chimney inside the hotel and on her resistance pushed her as also her husband and thereafter the appellant set the mattresses on fire with the help of the chimney at several places. The testimony of Jageshwar PW-3 also corroborates the testimony of Dhan Sai PW-1 and Ramhin Bai PW-2 and shows that the shop of Dhan Sai made only of mattresses quickly caught fire. He saw the appellant emerging from the hotel of Dhan Sai PW-1 and running away and caught him. The testimony of Binu PW-5 also corroborates the testimony of Dhan Sai PW-1 about a quarrel having ensued with the appellant in his shop. This witness also deposed that he saw the appellant running towards the basti after the shop caught fire and thereafter with the help of the villagers, the appellant was caught and tied with a rope. Gopal

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PW-6 also corroborated the above testimony and stated that on seeing the hotel of Dhan Sai PW-1 in flames, he also chased and caught the appellant. Phool Singh PW-7 and Ram Singh PW-9 have also corroborated the above version.

7. Having thus considered the evidence led by the prosecution in its entirety, there remains not even an iota of doubt that the appellant was the perpetrator of the crime and had set the purely temporary makeshift shop of Dhan Sai PW-1 made of mattresses on fire. Conviction of the appellant under Section-436 of IPC is thus well founded and does not call for any interference. So far as the sentence awarded to the appellant by the learned trial Judge is concerned, the appellant has already undergone incarceration for a period over 2 years since he is in jail from 14-06-2004. Considering the facts and circumstances of the case and the act of the appellant being without premeditation and a result of sudden quarrel with Dhan Sai PW-1 as also the purely temporary nature of his shop and the loss occasioned to Dhan Sai, interest of justice would be served if the sentence of imprisonment awarded to the appellant is reduced to the period already undergone by him.

8. In the result, this appeal is partly allowed. Conviction of the appellant under Section 436 I.P.C. is maintained. However substantive sentence of imprisonment awarded by the learned trial Judge is reduced to the sentence already undergone by the appellant. Sentence of fine awarded by the learned trial Judge is maintained.

Sd/-
Dilip Raosaheb Deshmukh
Judge